

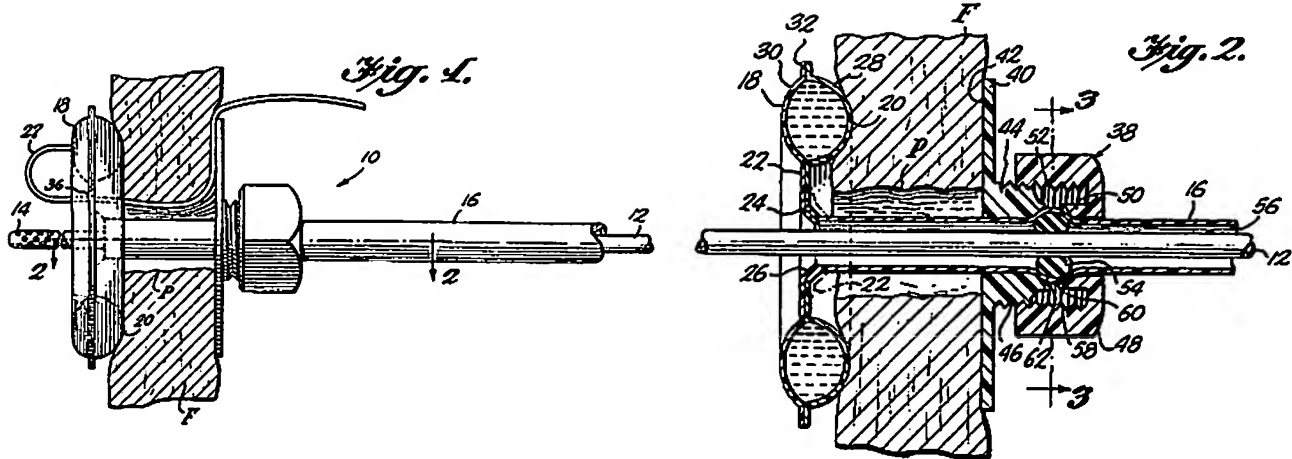
REMARKS

The above-identified application has been considered in view of the Final Office Action that was mailed on June 30, 2008. Claims 1 and 4-18 are currently pending. In view of the remarks and arguments presented herein below, Applicant respectfully submits that each of the pending claims is allowable over the cited references of record, and accordingly, respectfully requests reconsideration and allowance of the above-identified application.

In the Final Office Action, claims 1 and 4-18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,253,594 to Matthews *et al.* (hereinafter “Matthews”) in view of U.S. Patent No. 4,966,583 to Debbas (hereinafter “Debbas”). Applicant respectfully submits, however, that the combination of Matthews and Debbas suggested in the Final Office Action is improper under the MPEP.

Independent claims 1 and 16 each recite a system including, *inter alia*, a retractor having a shaft with inner and outer walls, a first lumen defined by the inner walls, and an inflatable bladder that is attached to a distal end of the shaft, “wherein the inflatable bladder is inflated by fluid received through a second lumen defined between the inner and outer walls of the shaft.”

Matthews relates to a peritoneal cannula 10 that is insertable through a perforation P formed in a patient’s tissue. (*See* col. 2, lines 54-55; *see* FIG. 1). The peritoneal cannula 10 includes a cannula 16 defining a lumen 56 therethrough, and a balloon 18. (*See* col. 3, line 75 – col. 4, lines 1; *see* col. 2, lines 55-57; *see* FIG. 2). The balloon 18 is connected to a distal end of the cannula 16, and is inflated by liquid communicated through a lumen 27 that is exterior to the cannula 16. (*See* col. 2, lines 55-57, 71-72; *see* FIG. 2). In addition to the aforementioned components, the peritoneal cannula 10 also includes an O-ring 54 that is positioned in the cannula 16. (*See* col. 3, lines 74-75; *see* FIG. 2).



In the Final Office Action, the cannula 16 and the lumen 56 extending therethrough were respectively characterized as the “shaft” and “first lumen” recited in claims 1 and 4-18. The Office Action acknowledged that Matthews fails to disclose an inflatable bladder that is inflated by fluid received through a second lumen defined between inner and outer walls of the cannula 16, and relied upon Debbas for disclosure of that concept.

MPEP 2143.01 (V) and (VI) respectively state that a proposed modification of a cited reference is improper if the proposed modification would either (1) render the subject matter described in the cited reference unsatisfactory for its intended purpose; or (2) change the principle of operation of the cited subject matter.

During use of the Matthews instrument, the O-ring 54 is constricted “to reduce the size of the passageway 56 in the cannula 16” to maintain the position of any member, e.g., the tubular member 12 seen above in FIGS. 1 and 2, disposed within the cannula 16, (*see* col. 3, line 75 – col. 4, line 1, lines 18-29), and “maintain the pressure exerted by the contact area 20 upon the flesh F” as well as “a tight seal at contact area 20 around the balloon.” (Col. 4, lines 35-37). Modifying the Matthews instrument to inflate the balloon 18 through a “second lumen” positioned between the inner and outer walls of the cannula 16 rather than through the exterior lumen 27, as suggested by the Office Action, would significantly interfere with inflation of the

balloon 18. Specifically, constricting the O-ring 54 to reduce the size of the passageway 56 would cause the "second lumen" to become pinched and narrowed to such an extent that any flow of fluid through the "second lumen" would be substantially, if not completely restricted. Thus, modifying Matthews' peritoneal cannula 10 as suggested by the Office Action would substantially inhibit, if not completely prevent, inflation of the balloon 18, thereby frustrating the disclosed operation of the peritoneal cannula 10 and rendering the peritoneal cannula 10 "unsatisfactory for its intended purpose." *See* MPEP 2143.01 (V).

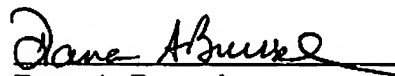
Inflating the balloon 18 using the proposed suggestion of the Office Action requires modifying the peritoneal cannula 10 to include alternative structure(s) for maintaining the position of the instruments inserted through the cannula 16 and the pressure exerted by the balloon 18 against a patient's tissue to create a seal. (*See* col. 4, lines 26-28, 35-37). As such, Applicant respectfully submits that modifying Matthews' peritoneal cannula 10 as suggested by the Office Action would require substantial reconstruction and redesign of the elements shown in Matthews, as well as a change in the basic principle under which Matthews' instrument was designed to operate, in contrast to the requirements of MPEP 2143.01 (VI).

Accordingly, and for at least these reasons, *inter alia*, Applicant respectfully submits that the modification of Matthews suggested by the Office Action in view of the disclosure in Debbas is improper under MPEP 2143.01 (V) and/or (VI). Therefore, Applicant respectfully submits that independent claims 1 and 16 are allowable over the references of record. As claims 4-15 and 17-18 depend either directly or indirectly from independent claims 1 and 16, respectively, and include each element recited therein, for at least the reasons that independent claims 1 and 16 are allowable over the references of record, *inter alia*, Applicant respectfully submits that claims 4-15 and 17-18 are also allowable over the references of record.

In view of the foregoing remarks and arguments, Applicant respectfully submits that claims 1 and 4-18 are allowable over the references of record, and accordingly, respectfully requests reconsideration and allowance of the above-identified application.

Should the Examiner believe that an interview may facilitate the resolution of any outstanding matters, the Examiner is sincerely invited to contact Applicant's undersigned attorney at (631) 501-5713.

Respectfully submitted,



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